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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,255	07/11/2001	Carl-Eric Kaiser	CM2388	9451

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EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,255

Applicant(s)

KAISER, CARL-ERIC

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1-3 recite the broad recitation "an environment which is sometimes wet and sometimes dry", and the claim also recites "such as a bathroom, shower stall...or a hot tub", which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-3, 6, 7, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek (U.S. Patent No. 2,738,225) in view of Kurz (DE 19532169).

Meek teaches an air-treatment material diffuser device **10** for containing a plurality of particles containing a volatile material (col.2, lines 6-8). The container may be fabricated of rigid materials (col.2, lines 40-43) and is openable and closeable. Although not specifically stated by Meek, it is obvious that the holes **15** must be smaller than the particles, otherwise the particles would fall out. Meek does not disclose using the device to deodorize or fragrance an environment which is sometimes wet and sometimes dry.

Kurz discloses use of a perfume dispenser within a sauna, wherein the dispenser includes a source of perfume **23** and a label **27** with writing.

It would have been obvious to one of ordinary skill in the art to use the dispenser of Meek within a sauna environment, as Kurz discloses that bathroom environments are sources of odors.

The limitations within the phrase “usage instructions to place said device inside an environment” (claims 2 and 3) are not given any patentable weight because the claim language refers to the pictures or markings on a material and these features are not held to be patentable (see M.P.E.P. 706.03(a)). Therefore, the claims have been interpreted to include any writing. As the label of Kurz includes writing thereon, it meets the claim limitations.

As to including writing and/or a label on the device of Meek, it is known in the art to place labels indicating the name of the product, ingredients, price, etc. on consumer products and would have been obvious in Meek.

With respect to the amount of treatment material to be included within the apparatus of Meek, it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

6. Claims 4, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek and Kurz as applied to claim 3 above, and further in view of Lee et al (U.S. Patent No. 5,008,115).

Meek fails to teach the use of spherical, uniform, polymeric particles as the air treatment material. Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. It would have been obvious to use the

polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek and Kurz as applied to claim 3 above, and further in view of Moore (U.S. Patent No. 5,935,526).

The holes in the container of Meek are all of substantially the same size. Moore, however, teaches a similar type of dispensing device wherein the “size and number of apertures 25 and 27 may be selected to increase or decrease the amount of ambient air which circulates through and around” the volatile material. See col.5, lines 11-14. Given this teaching, it is deemed obvious to fabricate the device of Meek having holes of any determined size in order to optimize the characteristics of the device.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek and Kurz as applied to claim 3 above, and further in view of Ramkissoon (U.S. Patent No. 5,240,653).

The combination *supra* is silent with respect to using different perfumed particles. Ramkissoon evidences that it was known in the art of air fresheners to includes more than one fragrance within a single dispenser. See col.5, lines 7-10 and Figure 10. As the inclusion of more than one type of fragrance and/or treatment medium is known in the art, it would have been obvious in the device of Meek.

9. Claims 13, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek.

Meek teaches an air-treatment material diffuser device 10 for containing a

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plurality of particles containing a volatile material (col.2, lines 6-8). The container may be fabricated of rigid materials (col.2, lines 40-43) and is openable and closeable.

Although not specifically stated by Meek, it is obvious that the holes **15** must be smaller than the particles, otherwise the particles would fall out. While Meek does not specifically teach that the volatile material is a perfume, it is generally known in the art of air-treating that "volatile air-treatment materials" refer to deodorants, perfumes, insecticides, and medicaments, and the use of a perfume in the apparatus of Meek would have been obvious.

With respect to the amount of treatment material to be included within the apparatus of Meek, it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

10. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek as applied to claim 13 above, and further in view of Lee et al.

Meek fails to teach the use of spherical, uniform, polymeric particles as the air treatment material. Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. It would have been obvious to use the polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramkissoo (U.S. Patent No. 5,240,653).

Ramkissoo teaches a device including a container 30 including different air treatment mediums. As Ramkissoo discloses that air fresheners may be used as a media, it would have been obvious to use more than one fragrance/perfume in the container.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1275. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Leigh McKane
Leigh McKane
Primary Examiner
Art Unit 1744

elm
12 July 2004